IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 375 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMITABEN HIMANSHUBHAI MEHTA

Versus

BHUPENDRA RASIKLAL SHAH PARNTER M/S AMI TRADING CO.

Appearance:

1. Criminal Misc.Application No. 375 of 2001

MR RD DAVE for Petitioner No. 1

MR PRABHAV A MEHTA for Respondent No. 1

MR PR ABICHANDANI, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/02/2003

ORAL JUDGEMENT

Present petition under Sec.482 of the Code of Criminal Procedure has been filed by the original accused

No.2 for quashing the complaint filed by the present respondent No.1 in the court of learned Metropolitan Magistrate, Court No.9, Ahmedabad, on 13-12-1995 which has been registered as Criminal Case No.4707 of 1995 in which process was issued against all accused i.e. partnership firm and its partners.

2. On receiving the process, all the four accused preferred petition being Cri.Misc.Appln.No.3202 of 1996 in this Court under Sec.482, Cr.P.C. for quashing the complaint in question wherein this Court (Coram:Y.B.Bhatt,J., as he then was) vide judgment dated 23-3-2002 allowed the petition qua petitioner-accused Nos.1 and 3 while it was rejected qua present petitioner-original accused Nos.2 and 4.

2.1 Thereafter, they submitted application Ex.3 before the court below praying for dropping of the proceedings. They raised the contention for re-examining or reconsidering the complaint and dropping the proceedings in view of the observations made by this Court in para 6 of the aforesaid judgment. They also raised the contention challenging the legality and validity of the statutory notice. Since offence was committed by the Company, the Company and its partners in-charge of business were only liable. They also contended that complaint itself was not maintainable as being defective as they had neither issued nor signed the alleged cheque. They also contended that the complainant deliberately did not produce reply given by the petitioner and lastly, since the partner Nos.2, 3 and 4 were dormant and sleeping partners, proceedings qua these partners may be dropped.

2.2 After hearing the learned counsel for the respective parties, learned Metropolitan Magistrate, Court No.9, rejected the abovereferred application Ex.3 filed by the present petitioners vide order dated 23-10-2000 which is giving rise to prefer the present petition.

3. At the initial stage, interim relief was granted by this Court (Coram: A.K.Trivedi, as he then was) vide order dated 24-1-2001 and till this date, matter could not be proceeded further.

4. Today, I have heard learned counsel for the petitioner, Mr.R.D.Dave, learned counsel for the respondent No.1, Mr.Prabhav A. Mehta and learned APP, Mr.P.R.Abichandani, for the respondent No.2.

5. Mr.Dave has mainly raised the contention regarding legality of notice. He has also argued that petitioner was not actively engaged in the transaction of its business. According to him, complaint is premature. He has also argued that partnership has already been dissolved in the year 1993 and it was duly informed.

6. I have asked specific question to Mr.Dave as to whether all these contentions were taken in the previous petition decided by this Court in Cri.Misc.Appln.No.3202 of 1996. He has stated that since he is not having the papers of previous petition, he would not be able to give any answer. It is required to be noted that petitioner has not annexed copy of Cri.Misc.Appln.No.3202 of 1996 with this petition and hence, record and proceedings of the previous petition preferred by the petitioner were called for from the office.

7. Mr.Mehta has mainly argued that the contentions raised by the petitioner in this petition and in the petition preferred before the court below have already been raised in Cri.Misc.Appln.No.3202 of 1996 decided by this Court and, therefore, it is a second round of litigation on the same subject matter and, hence, it is required to be rejected only on that ground. He has taken me through relevant para of the aforereferred judgment more particularly paras 5,6, 7 and 8 as well as para 4, page 3 of the complaint in question and argued that notice in question has been served upon the petitioner on 30-11-1995.

8. Learned counsel for the parties have relied upon various judgments which will be dealt with if found necessary.

9. Before I proceed with the matter, I would like to say that before beginning with the arguments, learned counsel for the petitioner has stated that present petitioner is the wife of a practising advocate of this High Court. I may state that this is not the way in which arguments are to be advanced.

10. What is required to be seen here is the judgment delivered by this Court in Cri.Misc.Appln.No.3202 of 1996. It was held in para 6 of the said judgment as under:

> "This leaves for consideration the contention raised on behalf of the accused Nos.2 and 4. It is sought to be contended that accused Nos.2 and 4 (inter alia) were not partners of the firm on

> whose behalf the cheque in question was issued, inasmuch as the firm had been dissolved to the knowledge of the complainant long before the due date of the cheque. It was further contended that this aspect has not been referred to in the complaint at all. However, whether the firm was in existence on the date on which the cheque became due or not, or whether it was dissolved prior to the due date, is a matter of evidence which can be led before the learned Magistrate, particularly sine it constitutes the defence of these accused on the merits of the case. This is not a point to be investigated by this Court for the purpose of ascertaining whether the issuance of the process on the basis of the complaint was justified or not"

It is clear from the above observations that the main point which has been raised by the learned counsel for the petitioner would not be available to him to argue again at this stage or raise before the court below before the evidence could be led by the parties. So, the court below has rightly rejected the request made for dropping of the proceedings.

11. As far as the point of legality of notice is concerned, same has been dealt with by this Court and it was observed in Cri.Misc.Appln.No.3202 of 1996 that it is a question of evidence.

12. Next point raised by the learned counsel for the petitioner is about the dissolution of partnership firm. I will have to deal with and decide the same because previously this Court has not decided the same in the interest of justice. But when the learned counsel for the petitioner has insisted for deciding the same, I have no alternative except to say few words in this regard.

13. It appears from the stamp paper used for preparing dissolution deed copy of which has been produced with the petition as Annexure-D, page 38, that said stamp paper has been purchased by one Kamlesh C. Shah, on behalf of Jayesh B. Thakkar, a resident of Navrangpura. Therefore, I have asked the learned counsel for the petitioner as to whether Shri Kamlesh C. Shah has any relation with the partnership firm. He says that he has nothing to do with the partnership firm or its business. It reflects from the stamp paper itself that it was purchased on 24-3-1992 whereas dissolution deed was prepared and signed on 30-6-1993. So it was in the

mind of the parties that dissolution of the partnership would be taking place in the year 1993 and, therefore, they have purchased the stamp paper well before one year and hence, it can be said that stamp paper in question has been purchased by somebody and utilized for the purpose of creating this document. Over and above, it has been further argued that copy of dissolution deed was immediately sent to the complainant with a covering letter. The questions therefore remain as to whether it has been received by the complainant and whether can it be decided here at this stage. Over and above, according to petitioner, dissolution has taken place on 30-6-1993, but transactions have taken place in the year 1995 and in 1995, persons of petitioner and other partners placed order for materials and same have been supplied by the complainant in the year 1995. Not only that, materials have been received and postdated cheque has been given to the complainant in the year 1995. It was further argued that the partnership has been dissolved in the month of June, 1993. However, it is to be noted that said firm continued to be in existence even in the year 1995 when they have placed order for materials and postdated cheque has been given to the complainant which prima facie leads to the conclusion that firm has not been dissolved at all or alternatively, it can be said prima facie that knowing fully well about the dissolution of the partnership, all the documents of the firm namely, cheque books, letter heads, invoice of the firm, etc. were being used by the present accused which is nothing but misuse of the process or it can be said that some special brain has been used by the accused for defrauding the complainant and others. In these circumstances, I would not be able to accept the argument advanced by the learned counsel for the petitioner that the partnership has been dissolved in the year 1993. On the contrary, all the things require trial.

14. Now at this stage, I have given opportunity to the learned counsel for the petitioner to go through the previous petition which has been filed by the petitioner in this Court through the very same learned counsel. On going though the same, he has stated that only point to be dealt with by this Court is whether the complaint in which cognizance has been taken has been filed before the cause of action had arisen. It reflects from paras 5,6, 7 and 8 of the judgment delivered by this Court in Cri.Misc.Appln.No.3202 of 1996 that the point raised by the learned counsel for the petitioner qua accused Nos.1 and 3 has been considered and complaint qua those accused has been quashed while it has not been quashed qua the present petitioner and therefore, it can be said that the contentions raised by the petitioner in this petition

have been dealt with by this Court while deciding Cri.Misc.Appln.No.3202 of 1996 and, therefore, whatever argument advanced by the learned counsel for the petitioner for a period of two hours is nothing but wastage of time of this Court. If he would have gone through the previous petition preferred by him on behalf of the present petitioner and order passed thereon, he would not have wasted time of this Court and it is a sheer negligence on the part of learned counsel for the petitioner.

15. In view of what has been stated hereinabove, I am of the opinion that this petition is a repetition of the previous preferred by the petitioner for the very same subject matter wherein detailed order has been passed by this Court in Cri.Misc.Appln.No.3202 of 1996 and when there is no substance in the petition, it is required to be rejected.

16. This petition is rejected. Rule is discharged. Interim relief stands vacated. Court below is directed to proceed with the matter on day-to-day basis and intimate this court as to the progress of the case at the end of two months.

(R.P.DHOLAKIA,J.)

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